



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4433/1
MCP:klm

2015 ASSEMBLY BILL 735

January 15, 2016 – Introduced by Representative LOUDENBECK, cosponsored by Senator COWLES. Referred to Committee on Environment and Forestry.

1 **AN ACT** *to amend* 283.16 (2m), 283.16 (3) (a), 283.16 (4) (d), 283.16 (7) and 283.16
2 (8) (b) 3.; and *to create* 227.01 (13) (yt), 281.15 (6), 283.15 (11), 283.15 (12),
3 283.16 (3) (b) 4., 283.16 (3m) and 283.16 (9) of the statutes; **relating to:** the
4 review of water quality standards and variances to water quality standards by
5 the Department of Natural Resources and exempting certain actions of the
6 Department of Natural Resources and the Department of Administration from
7 the requirement to promulgate rules relating to the statewide water quality
8 variance for phosphorus.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Natural Resources to conduct regular reviews of water quality standards and variances to water quality standards.

Background

Under current law, DNR must promulgate water quality standards for the waters of the state and effluent limitations for point sources of water pollution. DNR may approve a temporary variance from applicable water quality standards and effluent limitations in a Wisconsin Pollutant Discharge Elimination System (WPDES) permit issued to a point source.

Current law also creates a statewide variance for phosphorous water quality standards. An existing point source may request to have the statewide phosphorous

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variance apply to that source under the source's WPDES permit. Current law sets the interim effluent limitations that apply to a point source for which the statewide phosphorus variance has been approved. Before the statewide phosphorus variance may be made available for any point source, the Department of Administration must determine that complying with the applicable phosphorous effluent limitations is not feasible, and the federal Environmental Protection Agency must approve the statewide phosphorus variance.

Three-year review of water quality standards and variances

This bill requires DNR to review, every three years, the water quality standards that it has promulgated to determine whether the standards should be modified or new standards should be adopted. As part of this review, DNR must also review the variances to water quality standards that it has approved, including approvals under the statewide phosphorus variance. If DNR determines that a water quality standard to which a variance applies is attainable by a permittee, DNR is required to modify the variance when the source's permit is reissued or modified.

The bill requires DNR to hold a public hearing as part of this review, and to submit the results of its review to the EPA.

Five-year review of statewide phosphorus variance

This bill also requires DNR to review, every five years, the interim effluent limitations under the statewide phosphorus variance to determine whether they are consistent with the highest attainable condition for the point sources that are eligible for the statewide phosphorus variance. DNR must hold a public hearing as part of this review and submit the results of its review to the EPA within 30 days of determining that the review is complete. If DNR does not conduct this review every five years or does not submit the results of a review within 30 days, the statewide phosphorus variance is unavailable until the review is completed or the results are submitted, except that if the statewide phosphorus variance has been approved for a point source, the variance continues to apply to that source until the source's permit is reissued or modified.

If the statewide phosphorus variance has been approved for a point source, the bill also requires DNR to review, at the time the variance is initially approved for the source and each time the source's permit is reissued or modified, the applicable interim effluent limitations to determine whether they are consistent with the highest attainable condition for the source.

Under the bill, if DNR determines that the applicable interim effluent limitations are not consistent with the highest attainable condition for a permittee or for point sources that are eligible for the statewide phosphorus variance, DNR must include the effluent limitations that were identified as being consistent with the highest attainable condition in any permit that is issued or modified after the date of that determination.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 227.01 (13) (yt) of the statutes is created to read:

2 227.01 **(13)** (yt) Relates to implementing, interpreting, or administering s.
3 283.16, including determining social and economic impacts of compliance with
4 phosphorus effluent limitations, establishing application and eligibility
5 requirements for obtaining a variance, and providing guidance to the public.

6 **SECTION 2.** 281.15 (6) of the statutes is created to read:

7 281.15 **(6)** Every 3 years, as part of the review required by 33 USC 1313 (c) (1),
8 the department shall review the water quality standards promulgated under this
9 section and determine whether any existing standards should be modified or new
10 standards should be adopted. The department shall hold a public hearing to receive
11 information and public comment regarding water quality standards promulgated
12 under this section. The department shall publish notice of the hearing on the
13 department's Internet site at least 45 days before the hearing date. The department
14 shall submit the results of a review under this subsection to the federal
15 environmental protection agency.

16 **SECTION 3.** 283.15 (11) of the statutes is created to read:

17 283.15 **(11)** WATER QUALITY STANDARDS REVIEW. As part of the review of water
18 quality standards under s. 281.15 (6), as required by 33 USC 1313 (c) (1), the
19 department shall review the variances to water quality standards approved under
20 s. 283.15 or 283.16. The department shall receive information regarding these
21 variances at the public hearing held under s. 281.15 (6). If the department

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determines that a water quality standard to which a variance applies is attainable, the department shall modify the standard or variance accordingly at the time the permit containing the variance is reissued, modified, or revoked and reissued.

SECTION 4. 283.15 (12) of the statutes is created to read:

283.15 (12) FEDERAL REQUIREMENTS. Notwithstanding any of the provisions of this section, the department shall comply with the provisions of 40 CFR 131.14 when approving and implementing a variance under this section.

SECTION 5. 283.16 (2m) of the statutes is amended to read:

283.16 (2m) WATER QUALITY STANDARDS REVIEW. ~~Every 3 years as~~ As part of the review of water quality standards under s. 281.15 (6), as required by 33 USC 1313 (c) (1), if the variance under this section is in effect, the department shall determine whether formal review under sub. (3) should be undertaken, considering any comments it receives on the variance ~~under this section~~.

SECTION 6. 283.16 (3) (a) of the statutes is amended to read:

283.16 (3) (a) ~~In 2024~~ Within 10 years after the federal environmental protection agency approves, under sub. (2) (em), the variance under this section, if a determination under sub. (2) (a) that attaining the water quality standard for phosphorus through compliance with water quality based effluent limitations by point sources that cannot achieve compliance without major facility upgrades is not feasible is in effect, or upon a determination under sub. (2m) that review under this subsection should be undertaken, the department of administration, in consultation with the department of natural resources, shall prepare a report, no later than September 1, to evaluate whether the determination under sub. (2) (a) remains accurate. The department of administration shall consult with permittees that

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1 would be subject to water quality based effluent limitations for phosphorus and other
2 interested parties in preparing the report.

3 **SECTION 7.** 283.16 (3) (b) 4. of the statutes is created to read:

4 283.16 (3) (b) 4. The results of the most recent review under sub. (3m) (a).

5 **SECTION 8.** 283.16 (3m) of the statutes is created to read:

6 283.16 (3m) HIGHEST ATTAINABLE CONDITION REVIEW. (a) Every 5 years after the
7 variance under this section is approved by the federal environmental protection
8 agency, the department shall, as part of the review required by 40 CFR 131.14 (b) (1)
9 (v), review the interim effluent limitations under sub. (6) (a), or any other effluent
10 limitations that are in effect as a result of a previous review under this subsection
11 or sub. (3), and determine whether they are consistent with the highest attainable
12 condition for the point sources and categories of point sources that are eligible for the
13 variance under this section. In conducting this review, the department shall use all
14 existing and readily available information. The department shall hold a public
15 hearing in order to receive additional information and public comment. The
16 department shall publish notice of the hearing on the department's Internet site at
17 least 45 days before the hearing date.

18 (b) The department shall submit the results of a review under this subsection
19 to the federal environmental protection agency within 30 days after determining
20 that the review under par. (a) has been completed.

21 (c) If the department does not conduct a review within the time specified under
22 par. (a), the variance under this section will cease to be available until the
23 department completes the review and submits the results of the review to the federal
24 environmental protection agency.

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(d) If the department does not submit the results of a review to the federal environmental protection agency within the time specified under par. (b), the variance under this section will cease to be available until the department submits the results of the review to the federal environmental protection agency.

(e) In addition to the review under par. (a), at the time the variance under this section is initially approved for a point source, and at the time the source's permit is reissued, modified, or revoked and reissued, the department may review the interim effluent limitations under sub. (6) (a), or any other effluent limitations that are in effect as a result of a previous review under this subsection or sub. (3), and determine whether they are consistent with the highest attainable condition for the point source.

SECTION 9. 283.16 (4) (d) of the statutes is amended to read:

283.16 (4) (d) The Notwithstanding sub. (3m) (c) and (d), the variance under this section remains in effect for -a- an approved point source until the point source's permit is reissued, modified, or revoked and reissued.

SECTION 10. 283.16 (7) of the statutes is amended to read:

283.16 (7) MORE STRINGENT EFFLUENT LIMITATIONS. If the department determines under sub. (3) (cm) or (3m) (a) or (e) that it is appropriate to apply more stringent effluent limitations than those in sub. (6) (a) to all point sources or to a category of point sources the interim effluent limitations under sub. (6) (a), or any other effluent limitations that are in effect as a result of a previous review under sub. (3) or (3m), are not consistent with the highest attainable condition for a point source or category of point sources eligible for the variance under this section, the department shall include the more stringent effluent limitations that were specified under sub. (3) (cm) or (3m) (a) or (e) as being consistent with the highest attainable

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1 condition in permits that are reissued, modified, or revoked and reissued after that
2 determination for all the point sources source or for the category of point sources to
3 which the more stringent effluent limitations apply.

4 **SECTION 11.** 283.16 (8) (b) 3. of the statutes is amended to read:

5 283.16 (8) (b) 3. No later than May 1 of the 2nd year following a year in which
6 a county receives payments under this subsection, the county shall submit an annual
7 report to the department of natural resources, ~~the department of administration,~~ the
8 department of agriculture, trade and consumer protection, and each permittee from
9 which it received those payments. In the annual report, the county shall describe the
10 projects for which it provided cost sharing, quantify, in pounds, the associated
11 phosphorus reductions achieved using accepted modeling technology, and identify
12 any staff funded with the payments.

13 **SECTION 12.** 283.16 (9) of the statutes is created to read:

14 283.16 (9) FEDERAL REQUIREMENTS. Notwithstanding any of the provisions of
15 this section, the department shall comply with the provisions of 40 CFR 131.14 when
16 approving and implementing a variance under this section.

17 **(END)**